

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

GAJANAND TIMBER MART & SAW MILLS

Versus

STATE OF GUJARAT

Appearance:

Shri P.J. Vyas, Advocate, for the Petitioners

Shri A.G. Uraizee, Assistant Government Pleader,
for Respondent No. 1

Respondent No.2 served

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 06/09/96

ORAL JUDGEMENT

The order passed by and on behalf of the State
Government (respondent No. 1 herein) on 16th May 1986
under sec. 211 of the Bombay Land Revenue Code, 1879

(the Code for brief) is under challenge in this petition under art. 226 of the Constitution of India. By the impugned order, respondent No.1 cancelled the order passed by the Taluka Development Officer on 23rd February 1984 granting what is popularly known as the N.A. permission with respect to one parcel of land bearing survey No. 60/1 admeasuring 2 acres 17 gunthas situated at village Nanadelav taluka and district Bharuch (the disputed land for convenience).

2. The facts giving rise to this petition move in a narrow compass. The disputed land originally belonged to Bai Hurbai Musa Ibrahim (respondent No.2 herein). She obtained the N.A. permission from the Taluka Development Officer by his order passed on 23rd February 1984 on certain terms and conditions. Its copy is at Annexure A to this petition. It appears that after obtaining the N.A. permission by the order at Annexure A to this petition, respondent No.2 sold one parcel of land admeasuring 1 acre 17 gunthas from the disputed land to petitioner No.1 and the remaining part of the disputed land admeasuring 1 acre to petitioner No.2 herein some time on 6th March 1984 and 9th April 1984 respectively. It appears that the order at Annexure A to this petition came to the notice of the concerned officer of respondent No.1. He appears to have found it not according to law. Its suo motu revision under sec. 211 of the Code was therefore contemplated. A show-cause notice thereupon came to be issued to respondent No. 2 on 2nd September 1985 calling upon her to show cause why the order at Annexure A to this petition should not be revised under sec. 211 of the Code. Its copy is at Annexure B to this petition. It appears that respondent No.2 passed on the notice to the petitioners herein for their appropriate actions as they had purchased the disputed land from her as aforesaid. They therefore filed their reply to the show-cause notice on 3rd January 1986. Its copy is at Annexure C to this petition. By another application made on 13th January 1986, they requested respondent No.1 through its officer to give them an opportunity of hearing before passing any order pursuant to the show-cause notice at Annexure B to this petition. Its copy is at Annexure D to this petition. Without hearing the petitioners hereinabove, by the order passed on 16th May 1986, respondent No. 1 set aside the N.A. permission order at Annexure A to this petition. Its copy is at Annexure E to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning its correctness.

3. The impugned order cannot be sustained in law for a moment on the ground of breach of the audi alteram partem rule alone. In the reply at Annexure C to this petition, the petitioners clearly pointed out that they had purchased the disputed land from respondent No.2 and they were vitally interested in the proceeding arising from the show-cause notice at Annexure B to this petition. By their application at Annexure D to this petition, they prayed for an opportunity of hearing before passing any final order in the matter. No opportunity of hearing was given to the petitioners or either of them. They have thus been denied the right of hearing. The impugned order at Annexure E to this petition deserves to be quashed and set aside on this ground alone as violative of the audi alteram partem rule.

4. Ordinarily, after finding the order to be unsustainable on the ground of contravention of the principles of natural justice, the matter has to be remanded to the concerned authority for restoration of the proceeding to file and for its fresh decision according to law after observing the principles of natural justice. It is however not necessary to do so in the present case. The reason therefor is quite simple. It has been held by the Supreme Court in its ruling in the case of State of Gujarat v. Patel Raghav Natha and others reported in (1969)10 G.L.R. 992 that revisional powers under sec. 211 of the Code have to be exercised within the reasonable period of three months qua the N.A. permission order. The Division Bench of this Court in its ruling in the case of Bhagwanji Bawanji Patel v. State of Gujarat and another reported in (1971) 12 G.L.R. 156 has held that in any case the revisional powers under sec. 211 of the Code have to be exercised within the reasonable period of one year. Both the aforesaid rulings are binding to this Court. They are on all fours applicable in the present case.

5. The N.A. permission order at Annexure A to this petition was passed on 23rd February 1984. A show-cause notice for its revision under sec. 211 of the Code was issued more than 18 months thereafter on 2nd September 1985. It was thus issued beyond the reasonable period of 3 months in view of the aforesaid binding ruling of the Supreme Court and beyond the reasonable period of 12 months (one year) in view of the aforesaid binding ruling of the Division Bench of this Court. On the basis of either of the aforesaid rulings, the impugned order at Annexure E to this petition cannot be sustained in law. In that view of the matter, it is not necessary to remand

the matter to respondent No.1.

6. In the result, this petition is accepted. The order passed by and on behalf of the State Government on 16th May 1986 at Annexure E to this petition is quashed and set aside. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
